PP

v.

DARKASYI & ANOR

HIGH COURT MALAYA, JOHOR BAHRU
SYED AHMAD HELMY JC
[CRIMINAL TRIAL NO: (MT-1) 44-06-01]
3 JULY 2002

CRIMINAL PROCEDURE: *Transfer of cases - Power of Sessions Court - Accused produced before Sessions Court pending transmission of case to High Court - Charge under s. 39B Dangerous Drugs Act 1952 - Whether produced before a proper forum - Whether Sessions Court an 'appropriate subordinate court' - Postponement of transmission - Whether could postpone transmission and extend remand order pending production of Public Prosecutor's consent and requisition - Dangerous Drugs Act 1952, ss. 39B, 39B(3), 39B(4), 41A - Criminal Procedure Code, ss. 177A, 388 - Federal Constitution, art. 145*

WORDS & PHRASES: *"Subordinate court" - Section 41A Dangerous Drugs Act 1952 - Whether referred exclusively to Magistrate's Court - Whether included the Sessions Court*

The applicants were brought before the Sessions Court whereupon they were formally charged with an offence under s. 39B of the Dangerous Drugs Act 1952 ('DDA'). The facts showed that at the material time, the Public Prosecutor's consent and requisition for the transfer of the case to the High Court was yet to be obtained, and that being so, the learned Sessions Judge, after administering the charge, postponed the transmission of the case and extended the remand of the applicants for another two months. The applicants contended that the procedure adopted for charging them was legally flawed, as the Sessions Court was not the proper forum in which to produce and charge them. According to the applicants, the term 'appropriate subordinate court' in s. 41A of the DDA, upon its proper reading, and read with s. 177A of the Criminal Procedure Code ('CPC'), must exclusively refer to the Magistrate's Court. Being thus dissatisfied with the Sessions Judge's order, the applicants sought the High Court's indulgence to interfere with the same and posed the following questions for the court's determination, *viz*: (i) whether the Sessions Court constitutes the appropriate forum for the applicants to be produced and charged; and (ii) whether the appropriate court could postpone the transfer of the matter to the High Court when an accused person was first brought before it.

Held:

[1] The term 'subordinate court' is defined under s. 2 of the DDA as having the meaning assigned thereto in s. 3 of the Courts of Judicature Act 1964 ('CJA'). Section 3 of the CJA in turn defines 'subordinate courts' to mean "any inferior court from the decisions of which by reason of any written law there is right to appeal to the High Court and means in relation to the High Court any such court as by any written law has jurisdiction within the local jurisdiction of the High Court". That being so, the term 'subordinate court' being an inferior court would include both the Sessions Court as well as the Magistrate's Courts. Hence, the phrase 'appropriate subordinate court' means either the Sessions Court or the Magistrate's Court. (p 784 d-e)

[2] Section 177A CPC is not applicable to this case as the procedure for transmission of cases under the DDA for trial in the High Court is governed by s. 41A DDA and not the said s. 177A CPC. This must be so as s. 41A expressly provides that whenever an accused person is charged under s. 39B DDA he shall be produced before the appropriate subordinate court for the charge to be read and explained to him before the same is transmitted to the High Court. Section 41A further provides that sub-sections 1, 2 and 3 thereof shall have effect notwithstanding any other written law to the contrary. Thus, upon the principle of *generalibus specialia derogant*, s. 41A DDA being a special provision overrides s. 177A CPC. (p 785 c-d)

[3] Bearing in mind ss. 41A and 39B DDA, it is only upon the consent and requisition being produced in court pursuant to s. 39B(3) that the subordinate court will embark on transmitting the case to the High Court. In the present case, both the applicants were charged with an offence under s. 39B DDA, which offence was rendered unbailable under s. 41B(1)(a) DDA. In the circumstances, a subordinate court is empowered under s. 41B(1)(a) DDA read with s. 388 CPC to remand the applicants pending the issuance of the consent and requisition by the Public Prosecutor. It follows that the court below has the power to postpone the case herein and extend the remand of the applicants pending production of the said consent and requisition. (pp 785 g & 786 c, e, g)

[Application dismissed.]

Case(s) referred to:
Lee Chan Sang v. PP [1989] 1 MLJ 224 SC ***(refd)***
PP v. Chew Siew Luen [1982] 2 MLJ 119 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 3
Criminal Procedure Code, ss. 177A, 388
Dangerous Drugs Act 1952, ss. 2, 39B(3), (4), 41A(1), (2), (3), 41B(1)(a)
Federal Constitution, art. 145(3)

Other source(s) referred to:
Dangerous Drugs Laws, Mimi Kamariah, MLJ Sdn Bhd 1995 edn, p 49

For the prosecution - Teo Say Eng DPP
For the applicant - Gobind Singh Deo; M/s Karpal Singh & Co

Reported by WA Sharif

JUDGMENT

Syed Ahmad Helmy JC:
The application herein is against the decision of the Sessions Court judge in Johor Bahru made on 17 July 2001 ordering the extension of the applicant's remand until 20 September 2001.

The factual matrix reveals that the applicants were arrested on 6 April 2001. They were subsequently produced in the Sessions Court, Johor Bahru, where they were charged with an offence under s. 39B of the Dangerous Drugs Act 1952.

The charge was read to the applicants. No plea was taken from them. The prosecuting officer informed the Sessions Court that the prosecution has yet to obtain the chemist report. As such, the prosecuting officer asked for a postponement, to enable the prosecution to obtain these reports before the Public Prosecutor would issue a consent and requisition for the matter to be transferred to the High Court for trial.

The Sessions Court judge allowed the postponement and extended the remand of the applicants for a further two months.

The applicants are challenging both the forum of the Sessions Court and its power to postpone the transfer of the matter to the High Court after an accused person is first brought before it.

Two issues were placed before the court for determination, namely:

a) whether the Sessions Court was the appropriate forum in which the accused were to be produced and charged.

b) whether the appropriate court has the power to postpone the transfer of the matter to the High Court when an accused person is first brought before it.

The determination of the issues aforesaid would invariably involve an appraisal of the relevant provisions of the Dangerous Drugs Act 1952.

Section 41A of the Dangerous Drugs Act 1952 deals with special provisions relating to the transmission of a case to, and trial by, the High Court. It reads as follows:

41A (1) Where any case in respect of an offence under this Act is triable exclusively by the High Court or is required by the Public Prosecutor to be tried by the High Court, the accused person shall be produced before the appropriate subordinate court which shall, after the charge has been explained to him, transmit the case to the High Court without holding a preliminary inquiry under Chapter XVII of the Criminal Procedure Code, and cause the accused person to appear or be brought before such Court as soon as may be practicable.

(2) When the accused person appears or is brought before the High Court in accordance with subsection (1), the High Court shall fix a date for his trial which shall be held in accordance with the procedure under Chapter XX of the Criminal Procedure Code.

(3) The trial of a case transmitted to the High Court under subsection (1) shall be by a Judge of the High Court sitting alone, and the provisions of Chapter XXI and XXII of the Criminal Procedure Code shall not apply to such trial.

(4) The provisions of subsections (1), (2) and (3) shall have effect notwithstanding any other written law to the contrary.

It is the applicants' contention that the Subordinate Court referred to must relate to the Magistrate's Court for reason that since sub-s. (2) of s. 41A DDA stipulate the requirement such transfer are to be held in accordance with Chapter XX of the Criminal Procedure Code which by s. 177A thereof requires the production of the accused before a Magistrate's Court, it follows that the appropriate court cannot be the Sessions Court.

Learned prosecutor contends that the phraseology "appropriate court" in s. 41A of the DDA must be interpreted to mean either the Sessions Court or the Magistrate's Court whichever is appropriate for the reason that the definition of subordinate court under s. 2 of the DDA is assigned the same meaning as laid down by s. 3 of the Courts of Judicature Act 1964 where the term is defined as "any inferior court from the decisions of which by reason of any written law there is a right of appeal to the High Court and means in relation to the High Court any such court as by any written law has jurisdiction within the local jurisdiction of the High Court." By reason thereof the applicants' production before the Sessions Court is the correct forum.

The offence for which the applicants herein are being charged relates to dangerous drugs the statutory provisions regulating such offences would be the Dangerous Drugs Act 1952 and s. 41A thereof is the regulatory provision pertaining to the transmission of cases to the High Court for trial in cases involving dangerous drugs.

The term 'subordinate court' is defined under s. 2 of the DDA as having the meaning assigned thereto in s. 3 of the Courts of Judicature Act 1964. Section 3 of the CJA 1964 further defines 'subordinate courts' to mean "any inferior court from the decisions of which by reason of any written law there is a right of appeal to the High Court and means in relation to the High Court any such court as by any written law has jurisdiction within the local jurisdiction of the High Court."

From the definition given above it is my considered view that the term 'subordinate court' being an inferior court would include both the Sessions Court as well as the Magistrate's Courts.

The word 'appropriate' which qualifies 'subordinate court' lands credence to my view aforesaid. Cambridge International Dictionary of English defines the word 'appropriate' to mean "suitable or right for a particular situation or occasion". Thus it follows that the phrase appropriate subordinate court given its ordinary meaning would mean any subordinate court either Sessions Court or Magistrate's Court which is suitable for a particular situation. The construction aforesaid is further supported by the late Professor Mimi Kamariah where in her book *"Dangerous Drugs Laws"* MLJ Sdn. Bhd. 1995 edition at p. 49 in dealing with s. 41A of the DDA 1952 she was of the view that such an accused person may be brought before either the Magistrate's or Sessions Court.

In this connection it is pertinent to note that the Public Prosecutor by virtue of the power vested in him under s. 41A and s. 39B(3) and (4) of the DDA and pursuant to art. 145(3) of the Federal Constitution is empowered to choose the forum for the transmission of the case to the High Court for trial.

In any event whichever forum an accused is produced for the transmission of his case to the High Court, will not prejudice him in anyway. Section 41A only confers jurisdiction on the subordinate court to receive the production of any accused person, to have the charge explained to him and to transmit his case to the High Court – it does not confer any power to the Sessions Court or the Magistrate's Court to record any plea from the accused person.

The strenuous contention of counsel for the applicant that s. 177A of the Criminal Procedure Code specifically prescribes the Magistrate's Court as the appropriate forum for the accused to be produced and thereafter transmitted to High Court cannot be acceded to. I say so because s. 177A of the Criminal Procedure Code is not applicable in this case as the procedure of transmission of a case in respect of any offence under the DDA 1952 to trial by the High Court is governed by s. 41A of the DDA and not s. 177A of the Criminal Procedure Code as s. 41A of the DDA expressly provides that whenever an accused person is charged under s. 39B DDA 1952 which is triable exclusively by the High Court, he shall be produced before the appropriate subordinate court ie, either the Magistrate's or Sessions Court and the charge read and explained to him. Thereafter the case is transmitted to the High Court. Section 41A provides that sub-ss. 1, 2 and 3 shall have effect notwithstanding any other written law to the contrary. Applying the principle of *generalibus specialia derogant*, s. 41A DDA being a special provision overrides s. 177A of the Criminal Procedure Code. See also *PP v. Chew Siew Luen* [1982] 2 MLJ 119.

Second Issue

Whether the 'appropriate court' has the power to postpone the transfer of the matter to the High Court when an accused is first brought before it.

In determining the issue aforesaid it is essential to advert to the relevant provisions of the Dangerous Drugs Act 1952 namely s. 41A(1) of the Dangerous Drugs Act 1952, ss. 39B(3) and 39B(4) thereof.

The Interpretation of all the three subsections read as a whole would be as follows:

Under s. 41A(1) whenever an accused person is charged with an offence which is required by the Public Prosecutor to be tried by the High Court, he shall be produced before an appropriate subordinate court ie, a magistrate's court or Sessions Court.

Upon production as aforesaid, the charge will be read and explained to him but no plea will be taken from him as the subordinate court will have no jurisdiction to take a plea from an accused person under s. 41A(1) of the DDA: *Lee Chan Sang v. PP* [1989] 1 MLJ 224 SC.

Though s. 41A(1) talks of transmission after the charge is read and explained nevertheless it is predicated by the issuance of a consent and requisition of the Public Prosecutor as provided for by s. 39B(3).

It is only upon the consent and requisition being produced in court pursuant to s. 39B(3) will the subordinate court embark on transmitting the case to High Court and cause the accused person to appear or be brought before the High Court as soon as may be practicable pursuant to s. 39B(3) and s. 41A(1) of the DDA 1952.

The power of the transmission of a case to the High Court of the subordinate court is dependent on the production of the consent and requisition of the Public Prosecutor.

According to s. 39B(4) of the DDA, when an accused is brought before a subordinate court before the Public Prosecutor has consented to the prosecution, the charge shall be explained to him but he shall not be called upon the plead and the provisions of the law for the time being in force relating to criminal procedure shall be modified accordingly.

Both the accused persons herein are charged under s. 39B of the DDA 1952 which carries a mandatory death sentence. The said offence is rendered unbailable under s. 41B(1)(a) of the DDA.

By reason thereof a subordinate court is empowered under s. 41B(1)(a) of the DDA to be read with s. 388 of the Criminal Procedure Code to remand both the accused persons pending the issuance of the consent and requisition by the Public Prosecutor.

It follows that the subordinate court has the power to postpone the case and remand the accused pending the production of the consent and requisition of the Public Prosecutor. Once the consent and requisition is produced by the Public Prosecutor the subordinate court shall transfer the case and cause the accused to appear before the High Court as soon as may be practicable.

By reason of the aforesaid I accordingly dismiss the applicants' application in encl. 3.